The record of the case is also very unsatisfactory. Some of the documentary exhibits were not included in the record at all. There is so much cancellation and substitution in the record to make it very uncertain what evidence had, in fact, been adduced at the trial.

In the circumstances, I would allow the appeal and order a re-trial.

Appeal allowed. Re-trial ordered.

Solicitors: *Segaram & Co.*

VETHANAYAGAM v. KARUPPIAH & ANOR.

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) & Suffian F.J.) December 9, 1968]

[K.L. — Federal Court Civil Appeal No. X.22 of 1968]

Societies — Political party — Branch election — Whether unlawful — Declaration — Injunction — Societies Ordinance, 1949 and Societies Act, 1966.

The plaintiff sued the defendants (on behalf of themselves and all other members of the branch committee of the Kampong Pandan branch of the Malaysian Indian Congress (hereinafter referred to as the M.I.C.)), being the persons elected as chairman and vice-chairman at an annual general meeting of the Kampong Pandan branch held on October 15, 1967 — maintaining that (a) the Kampong Pandan branch purportedly formed on October 15, 1967 was not formed pursuant to the M.I.C. constitution; (b) the persons or the majority of them who attended the meeting were not persons who had been enrolled as members of the M.I.C.; (c) the persons who voted were not entitled to become members under the M.I.C. constitution; and (d) the Kampong Pandan branch was an illegal body *ultra vires* the M.I.C. constitution. The plaintiff sought various declarations *inter alia* to declare the election void and an injunction to restrain the defendants from exercising the powers of and/or actng in the capacity of members of the branch committee. Before the case came up for hearing the plaintiff took out a motion for an order restraining the defendants from infringing or violating the M.I.C. constitution and from acting any further as members pending the disposal of the suit. The motion came up before Raja Azlan Shah J. who in dismissing it held that at the time of the meeting of October 15, 1967 the branch was an unlawful society under the Societies Act, 1966, and consequently the court would not lend its aid to the plaintiff in granting an injunction to restrain the defendants from infringing or violating the M.I.C. constitution. On appeal,

Held: (1) by the time the motion came up for hearing on March 1, 1968 the Kampong Pandan branch of the M.I.C. had ceased to be an unlawful society;

(2) the plaintiff was at the time of the annual general meeting on October 15, 1967 a member of the M.I.C.;

(3) as there was no evidence of the plaintiff's right of property having been affected, the learned judge was right in refusing to issue the injunction sought, assuming that the Kampong Pandan branch was an unlawful society;

(4) the court should not order an interim injunction because since the judgment fresh elections had been held. Justice of the case would be met if the appeal were to be dismissed with no order as to costs.

Cases referred to:—

(1) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63.

(2) *Soh Hood Beng* v. *Khoo Chye Neo* [1896], 4 S.S.L.R. 115.

(3) *Greenberg* v. *Cooperstein* [1926] Ch. 657.

(4) *Soh Ah Suan* v. *Ang Huat Chwee & Anor.* [1937] M.L.J. 109.

(5) *Ramdas Khatau & Co.* v. *Atlas Mills Co. Ltd.* A.I.R. 1931 Bombay 151.

(6) *Emperor of Austria* v. *Day* 45 E.R. 861, 875.

FEDERAL COURT.

Lim Kean Chye (*S. Kulasegaran* with him) for the appellant.

Dato' Athi Nahappan (*D.P. Vijandran* with him) for the respondents.

Cur. Adv. Vult.

Suffian F.J.: The Malaysian Indian Congress (hereinafter referred to as the M.I.C.) was a lawful society duly registered under the Societies Ordinance, 1949 (F.N. No. 28 of 1949). Its objects are principally "to safeguard and promote the political, economic, educational, cultural and social interests of Indians in Malaya (later Malaysia)" and also "to promote and maintain inter-racial goodwill and harmony" (Article 4). The national organization has its headquarters in Kuala Lumpur and is controlled by the Central Working Committee. It has branches in the different States of the country and in the States it has local branches, one of them being at Kampong Pandan, Kuala Lumpur. In 1964 the plaintiff was treasurer of the Kampong Pandan branch.

This branch held an annual general meeting on 31st May, 1964, but owing to some rowdy elements this meeting was frustrated and it thus became necessary under the Constitution of the M.I.C. for the State branch to take over the responsibilities of the Kampong Pandan branch. However, no action was taken by the State branch as required under the Constitution to collect subscriptions or to hold any annual general meeting until 1967. Towards the end of 1967 steps were taken by the State branch to put new life into the Kampong Pandan branch by renewing the membership of old members and recruiting new members. Accordingly on 15th September, 1967, the plaintiff signed an application to become a member, Exhibit D.3 attached to the first defendant's affidavit dated 27th January, 1968. The plaintiff was given a receipt on the same day.

On 15th October, 1967, the Kampong Pandan branch held an annual general meeting and also an election of members of its committee. As it happened, the plaintiff was not elected to any office. Mr. A.J. Karuppiah, the first defendant, was elected chairman and Mr. N. Manickam, the second defendant, vice-chairman of the branch committee.

The plaintiff on 25th October, 1967, instituted this suit suing the two defendants (sued on behalf of themselves and all other members of the branch committee). The plaintiff maintained that —

(1) the Kampong Pandan branch purportedly formed on 15th October, 1967, was not formed pursuant to the provisions of article 7(1)(c)(i) of the M.I.C. Constitution.

That provision reads:—

"Application for the formation of a new branch congress shall be made to the State congress by not less than 50 persons in the locality who shall sign the application."

(2) the persons or the majority of persons who attended the meeting on 15th October, 1967, as members of the M.I.C. were in fact not members because they had not been enrolled in accordance with articles 5 and 7(1)(a) of the M.I.C. Constitution. Article 5 deals with application for membership, admission to membership, register of members, membership fees, rights of members, obligations of members, the determination of membership and disciplinary action against members.

Article 7(1)(a) provides:—

"Membership of the congress shall be through admission at a branch congress in the manner provided in rules (2) and (3) of article 5 of this Constitution."

(3) persons who voted at the meeting purportedly as members were not entitled to become members under the M.I.C. Constitution;

(4) the Kampong Pandan branch was an illegal body *ultra vires* the M.I.C. Constitution because it exists contrary to article 7(1)(c)(iv) of the M.I.C. Constitution in that the Central Working Committee has at no time given its approval to the formation of the branch or of the branch committee. Article 7(1)(c)(iv) provides:—

"The new branch congress shall be established subsequent to the approval of the central working committee and to the compliance with any statutory provisions in force at the material time."

Accordingly the plaintiff asked the court —

(1) to declare the election of the defendants and all other persons as members of the Committee of the Kampon Pandan branch on 15th October, 1967, *ultra vires* the M.I.C. Constitution and therefore null and void;

(2) to declare the Kampong Pandan branch which met on 15th October, 1967, an illegal body *ultra vires* the M.I.C. Constitution;

(3) to declare that persons who voted at the election that day were in fact not members of the M.I.C.;

(4) to issue an injunction to restrain the defendants and all other members of the committee of the Kampong Pandan branch from exercising the powers of and/or acting in the capacity of members of the branch committee.

The merits of this claim have not yet been thrashed out. Here we are concerned only with a motion dated 7th December, 1967, by the plaintiff for an order restraining the defendants from infringing or violating the M.I.C. Constitution and from acting any further as members of the committee of the Kampong Pandan branch until after the disposal of this suit. This motion was heard on 5th February, 1968 and 1st March by Raja Azlan Shah J., who dismissed it on 6th March. He held as follows. On the authority of *Tharmalingam* v. *Sambanthan* [1] the relations between the parties were contractual. At the time of the meeting the branch was an unlawful society under the new Societies Act, 1966. On the authority of *Soh Hood Beng* v. *Khoo Chye Neo* [2] an illegal association can neither sue nor be sued by its members. The Societies Act, 1966, having declared the local branch to be unlawful, no member can acquire any right which is founded upon that which is unlawful. Therefore the court should not lend its aid in granting an injunction to restrain the defendants from infringing or violating the M.I.C. Constitution.

The plaintiff appealed.

On his behalf Mr. Lim Kean Chye argued first that while the judge was right in holding that by vitue of section 12 of the Societies Act, 1966, the Kampong Pandan branch was an unlawful society, yet he was wrong in holding that the plaintiff was a member of that unlawful society, because, it was said, under the M.I.C. Constitution you were either a member of the M.I.C. or not a member at all, as there was no provision in the Constitution for any one to become a member of a local branch. Mr. Lim contended that the plaintiff was in fact a member of the M.I.C. Secondly, it was said that the cases relied on by the judge were cases on illegal contracts found by the judge himself and on which the plaintiff was not given an opportunity to comment before delivery of judgment and Mr. Lim, relying on *Greenberg* v. *Cooperstein* [3] followed by a local case *Soh Ah Suan*'s case,[4] argued that the judge should have granted the plaintiff the injunction sought, on the ground that he was not asking the court to further an illegality, but to stop the defendants from doing illegal things.

The first question that arises is this, was the Kampong Pandan branch an unlawful society which Dato' Nahappan for the defendants denied. The M.I.C. was a lawful society, duly registered under the Societies Ordinance, 1949, and therefore all its branches were automatically lawful, because the law then did not require separate approval for branches of a duly registered society. Then on 1st February

1966, the new Societies Act, No. 13 of 1966, came into force, which brought about a change in the law as far as branches of registered societies were concerned. Section 12(1) thereof provides that no registered society shall establish a branch without the prior approval of the Registrar of Societies. I agree with Dato' Nahappan that to become lawful a branch of a registered society does not require separate registration; all that is required is the registrar's approval. Sub-section (3) provides that where a registered society establishes a branch without the prior approval of the registrar, not only the branch so established is deemed to be an unlawful society, but also the parent registered society. But to meet the case of already established societies such as the M.I.C. and presumably to lighten the administrative load imposed on the registrar by the coming into force of the new Act, it is provided by the proviso to sub-section (3) that a branch of a registered society established and in existence immediately before the commencement of the Act shall not be deemed to be an unlawful society if within six months from the commencement of the Act or within such extended period, not being more than three months, as the registrar may allow, such registered society applies to the registrar in writing for his approval under section 12. It is to be noted that to make the Kampong Pandan branch lawful, all that was necessary was for the M.I.C. to apply within a given time to the registrar in writing for approval — followed in due course by approval. A letter dated 8th January, 1968 (exhibited as V.8 in the plaintiff's affidavit sworn on 24th January, 1968) addressed by the Registrar of Societies to the plaintiff's solicitors said that the branch had not been approved because no application for approval had been received under the Societies Act. In my judgment, this is the clearest evidence that the branch as late as 8th January, 1968, nearly three months after the issue of the writ, was an unlawful society. Dato' Nahappan objected that this letter did not sufficiently identify the Kampong Pandan branch. I regret I do not agree with him; the plaintiff's affidavit dated 24th January, 1968, in its paragraph 5 clearly stated that the letter referred to the branch and there was no affidavit contradicting that statement.

But even if the branch was an unlawful society then, by the time the motion for the interim injunction came up for hearing on the second occasion on 1st March, 1968, it had ceased to be so — because Exhibit A.1 referred to in the first defendant's affidavit dated 29th February, 1968, is a copy of a certificate of approval issued by the Registrar of Societies in respect of the Kampong Pandan branch and that certificate was dated 6th February, 1968. The significance of this metamorphosis will be brought out later in my judgment.

The second question is, was the plaintiff a member of the Kampong Pandan branch which was an unlawful society at the time of the writ of summons but which later became a lawful society or was he a member of the M.I.C.

Mr. Lim Kean Chye argued that the plaintiff, if he was a member, was a member not of the branch but of the M.I.C. I have looked at the provisions of the Constitution of the M.I.C. and I agree with his submission. Under article 5(2)(a) a person intending to be a member shall apply for admission on such printed enrolment form as the Central Working Committee of the M.I.C. may from time to time prescribe and such form of application, when completed, shall be forwarded to the branch secretary together with the annual subscription for the current year. Under article 7(1)(a) membership of the congress shall be through admission at a branch congress, such as the Kampong Pandan branch, in the manner provided in article 5. Under article 5(3)(a) an application for membership is considered at the next committee meeting of the branch congress. If the application is approved, the applicant becomes a member. Under article 15(2)(iii) a membership card is issued by headquarters to the local branch. A member is defined by article 3(1)(k) as meaning a person admitted as a member of the Congress under article 5(3). So it is clear that you cannot be a member of a local branch and that you can only be a member of the M.I.C.

Was the plaintiff a member at the time of the crucial meeting held by the Kampong Pandan branch on 15th October, 1967? As has been seen, the branch after the abortive meeting on 31st May, 1964, became dormant. The first defendant's affidavit dated 27th January, 1968, said in paragraphs 6 and 8 that between that abortive meeting and the crucial meeting on 15th October, 1967, no subscriptions were collected and no meetings were held by the branch. On 15th September, 1967, the plaintiff signed an application to become a member, Exhibit D.3 attached to the first defendant's affidavit dated 27th January, 1968. The first defendant, referring to this, said that the plaintiff by this document renewed his membership when the Selangor State branch of the M.I.C. took steps to renew old membership and enrol new members. It is to be noted that the plaintiff applied to be a member of the M.I.C. I think that this is conclusive, though at the foot of the application form he specified that he wished to join the Kampong Pandan branch.

There is a receipt dated 15th September, 1967, acknowledging the payment of one dollar, being membership subscription for the year 1967, by the plaintiff to the M.I.C. This receipt is Exhibit P. referred to in the plaintiff's own affidavit dated simply February 1968. In view of this I am quite convinced that the plaintiff was

at the time of the crucial meeting on 15th October, 1967, a member of the M.I.C.

The third question is, on these facts, was the judge right in refusing to issue an interim injunction against the defendants. As has been seen, he refused because the Kampong Pandan branch was an unlawful society, no member of an unlawful society could acquire a right founded on an unlawful body which could neither sue nor be sued. If at the relevant time the branch was an unlawful society, then by virtue of section 42 of the Societies Act any office-bearer and any person managing or assisting in its management, such as the defendants, committed a serious offence (punishable with up to five years imprisonment) and the effect of the plaintiffs' application for an injunction was to request the court to prevent the commission of acts which would be criminal. Now, injunctions in the Malay States are dealt with in Part III of the Specific Relief (Malay States) Ordinance, 1950. This corresponds to Chapters IX and X of the Indian Specific Relief Act, 1877. With regard to the Indian Act, it was said by Beaumont C.J. in a Bombay case, *Ramdas Khatau & Co.* v. *Atlas Mills Co. Ltd.*,[5] that the Act was not exhaustive and it was open to the courts in Bombay to rely on English cases on injunctions. With respect I agree that the same applies to the courts in the Malay States. In England it was held as long ago as in 1861 in *Emperor of Austria* v. *Day* [6] that the courts have no jurisdiction to prevent the commission of acts which are merely criminal or merely illegal and do not affect any rights of property. So as there is no evidence here of the plaintiff's rights of property having been affected, the judge was right in refusing to issue the injunction sought, assuming that the Kampong Pandan branch was an unlawful society.

But, as has been seen, by the time of the hearing of arguments on the second day the branch had undergone a metamorphosis — it had become a lawful society. The position at the time of arguments then was this: the plaintiff and the defendants were members of the M.I.C., the Kampong Pandan branch was a lawful society, but as at the time of the defendants' election to its committee on 15th October, 1967, it was an unlawful society, persons who took part in the election committed an offence (section 43 of the Societies Act) and therefore the election was, in my judgment, null and void and the defendants were not office-bearers at all. In view of this, the learned judge (had he wanted to) could have issued an injunction restraining the defendants from acting as members of the committee.

Finally, what is the order that should be made in this appeal? Clearly, this court cannot order an interim injunction to issue against the defendants as prayed, nor does Mr. Lim desire us to do so. The reason is that since the judgment fresh elections for 1968/1969 have been held by the branch and a fresh set of committee members has been elected. In view of this, Mr. Lim asked us merely to allow the appeal without at the same time issuing an injunction, as otherwise the defendants would have been unjustly mulcted in costs.

No matter what the decision of the learned judge might have been had he realized that at the time of his judgment the branch was a lawful society, this court is bound to consider the matter as things stand today. As things stand today, events have overtaken the parties, and should this matter ever go to trial it would be quite futile to issue the plaintiff the injunction sought as there is now no question of the defendants acting as committee members. In view of this, the justice of the case would in my judgment be met if this appeal were to be dismissed, and I accordingly dismiss it.

I have given much thought to the question of costs and come to the conclusion that the most appropriate order in the circumstances would be to make no order as to costs of this appeal. Further the learned judge's order as to costs should be and is hereby set aside because the election of office-bearers in any event was illegal and void and the defendants were at fault and not lawful office-bearers as claimed. Here again there should be no order as to costs.

Azmi L.P. and **Ong Hock Thye C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *Ranjit, Thomas & Kula; Athi Nahappan & Co.*

KUO GEOK SUI v. LING PING KWONG

[O.C.J. (B.T.H. Lee J.) January 7, 1969]
[Sibu — Suit No. 23 of 1968]

Landlord and Tenant — Controlled premises — Claim by owner for possession — Whether occupier was licensee or tenant — Rent Control Ordinance (Sarawak Cap. 86).

Under an agreement dated January 4, 1966 and written in Chinese the defendant occupied certain rent controlled premises belonging to the plaintiff. The agreement was for an initial period of one year and renewable. It was renewed for one year. The plaintiff had the right to repossess the premises for his own use upon giving three months' notice. The defendant was referred to as "tenant" in the agreement and the plaintiff issued rent receipts marked "Shop Rent Receipt".

By a letter dated September 25, 1967 and written in Chinese the plaintiff gave the defendant notice to quit the premises but did nothing pursuant to the notice and the defendant continued to occupy the premises. On February 29, 1968 the plaintiff through her solicitors gave the defendant one month's notice to quit the premises referring to the defendant as "statutory tenant". As the defendant did not comply with the notice to quit the plaintiff brought these proceedings to secure posses-